

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



V

**FANTASTIC SAMS**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid vacation time  
RSA 275:43 I unpaid bonus

**Employer:** Fantastic Sams, 63 Hamel Drive, Manchester, NH 03104

**Date of Hearing:** March 26, 2014

**Case No.** 47438

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on January 30, 2014. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on February 27, 2014.

The claimant testified that she worked for the employer for about seven years as an hourly employee. She testified that the vacation time was accrued in the previous year. She stated that you were allowed to carry over past time but you had to work the day before and the day after a leave day.

The claimant also stated that it was a past practice to receive a bonus around Christmas time and it was included with the regular pay check.

The employer testified that there was an employee handbook in place and it was known to the claimant. The employer stated that the claimant quit her job on December 24. She was scheduled to work on December 26 and never showed up for the scheduled shift. The employer found that on December 24, the claimant left work and left her key and credit card on the desk.

The employer said that there is no provision for the pay out of vacation time in this situation. Also because the claimant did not work the day after Christmas, she was not entitled to a Christmas bonus. The handbook did say that the accrued leave was not to be taken as a wage supplement but was to be used, with notice.

### **FINDINGS OF FACT**

RSA 275:43 I. Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee.

803.01 (a). Pursuant to RSA 275:43, I and II, every employer shall pay all wages due to his/her employees within 8 days, including Sundays, after the expiration of the workweek on regular paydays designated in advance. Biweekly payments of wages shall meet the foregoing requirement if the last day of the second week falls on the day immediately preceding the day of payment. Payment in advance and in full of the work period, even though less frequently than biweekly, also meets the foregoing requirement.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

RSA 275:43 V. Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

This part of the law places an issue such as vacation time into the category of wages when the time is due and owing.

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An issue such as bonus payments becomes wages when the payment is due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony presented for the hearing, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and she did not meet this burden.

The claimant is seeking wages that were outside of a regular pay for hours worked. The bonus leave was paid after the claimant left the employment of the company. She was not employed on Christmas day and so did not get the bonus.

The claimant also worked under an employee handbook. The handbook was known to the claimant and clear on the payout of accrued vacation time. The Hearing Officer finds that the

written policy is the governing policy in this case. The language is clear on its' face and so there is no payout of accrued vacation time.

The employer was credible in her testimony that the claimant was not an employee on Christmas Day and so there was no entitlement to the Christmas bonus.

The Wage Claim is invalid.

### **DECISION AND ORDER**

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as RSA 275:43 V considers vacation pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that she is due any vacation pay, it is hereby ruled that the Wage Claim is invalid.

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds the claimant failed to prove by a preponderance of the evidence that she was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

/s/

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: April 11, 2014

Original: Claimant  
cc: Employer

TFH/cag